Buildcon Concrete Sdn Bhd v Mammoth Empire Construction Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCC-446–09 OF 2020
ADLIN ABDUL MAJID JC
23 JUNE 2021

Civil Procedure — Summary judgment — Triable issues — Whether any triable issues raised — Whether the claim was clear and straightforward — Whether oral evidence was necessary — Rules of Court 2012 O 14

This was a summary judgment application ('encl 30') by the plaintiff against the defendants. The judgment sought by the plaintiff against the defendants was for the outstanding principal sum of RM8,340,419.44, and interest on the outstanding sum amounting to RM10,600,006.51 ('claimed sum'). The plaintiffs claim arose from a relationship of supplier and purchaser, between the plaintiff and the first defendant. Pursuant to letters of quotation ('agreements') issued by the plaintiff to the first defendant between the years 2014–2017, the plaintiff supplied and delivered ready-mix concrete products ('goods') to the first defendant. Further, a guarantee dated 28 November 2005 ('guarantee') was executed by the second and third defendants in favour of the plaintiff. The goods were supplied and delivered by the plaintiff to the first defendant. There were outstanding sums due and owing by the first defendant to the plaintiff, arising from the supply and delivery of the goods. The plaintiff claimed that as at 31 August 2018, the first defendant was indebted to the plaintiff in the sum of RM20,569,300.22 ('August 2018 debt'). A meeting was thus held between the representatives of the plaintiff and the first defendant in August 2018 ('August 2018 meeting'), to discuss the August 2018 debt. After the meeting, the plaintiff issued a letter dated 12 September 2018 ('plaintiff's letter') to the first defendant recording the August 2018 debt and enclosed a debit note which contained details of the outstanding sum. The plaintiffs' letter also stated that the August 2018 debt would be reduced by way of the plaintiff's offtake of sand from Hasil Perangsang Holdings Sdn Bhd ('Hasil Perangsang'). The first defendant responded to the plaintiff's letter and requested for a reduction in the outstanding interest. The plaintiff continued to supply and deliver the goods to the first defendant until May 2019. In the meantime, the plaintiff obtained sand from Hasil Perangsang, to offset the first defendant's August 2018 debt. The offtake of the sand by the plaintiff continued until January 2020. As at 8 July 2020, upon the deduction of the offtake of sand by the plaintiff and payments made by the first defendant, the first defendant was still indebted to the amount of the claimed sum. Letters of demand were issued by solicitors of the plaintiff to the defendants, to demand payment for the claimed

A sum. The defendants did not respond to the letters of demand. As such, the plaintiff commenced this action against the defendants. The plaintiff asserted that: (a) the claim was clear and straightforward; (b) there were no triable issues or defence on the merits; and (c) the defendant's conducts tantamount to an admission of their indebtness towards the plaintiff. The issue that arose for B determination was whether the defendants had raised any triable issue, which would require the matter to be heard at trial.

Held, dismissing the application with costs:

C (1) Particulars of a claim must be clearly spelt out, before judgment can be granted summarily. It was not clear how the claimed sum was calculated. It was also unclear how the August 2018 debt was reduced to the claimed sum, which raised serious issues on the accuracy of the claimed sum (see para 27).

D (2) The plaintiff's letter recorded the August 2018 debt and stated that the August 2018 debt would be reduced by way of the plaintiff's offtake of sand from Hasil Perangsang. However, the letter did not address the exact details of the sand arrangement, such as when the sand arrangement commenced and when the arrangement should stop. The court agreed E with the defendant that these issues could only be resolved by oral evidence during trial. The court found that the plaintiffs claim was not a straightforward claim, which would permit the grant of summary judgment (see paras 29 & 31).

F **[Bahasa Malaysia summary**

Ini adalah permohonan penghakiman terus ('lampiran 30') oleh plaintif terhadap defendan. Penghakiman yang dipohon oleh plaintif terhadap defendan adalah bagi jumlah pokok tertunggak sebanyak RM8,340,419.44, dan faedah ke atas jumlah tertunggak berjumlah RM10,600,006.51 ('jumlah G yang dituntut'). Tuntutan plaintif timbul daripada hubungan pembekal dan pembeli, antara plaintif dan defendan pertama. Menurut surat sebut harga ('perjanjian') yang dikeluarkan oleh plaintif kepada defendan pertama antara tahun 2014–2017, plaintif membekalkan dan menyerahkan produk konkrit siap campur ('goods') kepada defendan pertama. Selanjutnya, jaminan H bertarikh 28 November 2005 ('jaminan') telah dilaksanakan oleh defendan kedua dan ketiga yang memihak kepada plaintif. Barangan tersebut dibekalkan dan dihantar oleh plaintif kepada defendan pertama. Terdapat jumlah tertunggak yang perlu dibayar dan perlu dibayar oleh defendan pertama kepada plaintif yang wujud dari pembekalan dan penghantaran barangan. I Plaintif mendakwa bahawa pada 31 Ogos 2018, defendan pertama telah berhutang dengan plaintif dengan jumlah hutang sebanyak RM20,569,300.22 ('hutang Ogos 2018'). Oleh itu, satu mesyuarat telah diadakan antara wakil plaintif dan defendan pertama pada Ogos 2018 ('mesyuarat Ogos 2018'), untuk membincangkan hutang Ogos 2018. Selepas mesyuarat itu, plaintif

mengeluarkan surat bertarikh 12 September 2018 ('surat plaintif') kepada defendan pertama yang merekodkan hutang Ogos 2018 dan melampirkan nota debit yang mengandungi butiran jumlah tertunggak. Surat plaintif juga menyatakan bahawa hutang Ogos 2018 akan dikurangkan melalui tindakan plaintif melepaskan pasir daripada Hasil Perangsang Holdings Sdn Bhd ('Hasil Perangsang'). Defendan pertama membalas surat plaintif dan meminta pengurangan faedah tertunggak. Plaintif terus membekal dan menghantar barangan itu kepada defendan pertama sehingga Mei 2019. Sementara itu, plaintif memperoleh pasir daripada Hasil Perangsang, untuk mengimbangi hutang defendan pertama pada Ogos 2018. Pengsan terhadap pasir oleh plaintif diteruskan sehingga Januari 2020. Pada 8 Julai 2020, selepas potongan potongan pasir oleh plaintif dan pembayaran yang dibuat oleh defendan pertama, defendan pertama masih terhutang budi kepada jumlah yang dituntut. Surat tuntutan telah dikeluarkan oleh peguam bela plaintif kepada defendan-defendan, untuk menuntut bayaran bagi jumlah yang dituntut. Defendan tidak membalas surat tuntutan tersebut. Oleh itu, plaintif memulakan tindakan ini terhadap defendan. Plaintif menegaskan bahawa: (a) tuntutan itu jelas dan mudah; (b) tidak ada isu-isu yang boleh dibicarakan atau pembelaan atas merit; dan (c) perbuatan defendan tersebut adalah suatu pengakuan keberhutangan mereka terhadap plaintif. Isu yang timbul untuk penentuan adalah sama ada defendan telah membangkitkan isu yang boleh dibicarakan yang memerlukan perbicaraan penuh.

Diputuskan, menolak permohonan dengan kos:

(1) Butir-butir tuntutan mestilah dinyatakan dengan jelas, sebelum penghakiman boleh diberikan secara ringkas. Adalah didapati bahawa jumlah yang dituntut tidak jelas. Juga tidak jelas bagaimana hutang Ogos 2018 dikurangkan kepada jumlah yang dituntut, yang menimbulkan isu-isu serius mengenai ketepatan jumlah yang dituntut (lihat perenggan 27).

(2) Surat plaintif telah merekodkan hutang Ogos 2018 dan menyatakan bahawa hutang Ogos 2018 akan dikurangkan melalui tindakan plaintif melepaskan pasir daripada Hasil Perangsang. Walau bagaimanapun, surat itu tidak menyatakan butiran sebenar susunan pasir, seperti bagaimanakah urusan permindahan pasir. Mahkamah ini bersetuju dengan defendan bahawa isu-isu ini hanya boleh diselesaikan melalui keterangan lisan semasa perbicaraan. Mahkamah mendapati bahawa tuntutan plaintif bukanlah tuntutan yang mudah, yang boleh membenarkan penghakiman terus (lihat perenggan 29 & 31).]

Cases referred to

Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 MLJ 400, SC (refd)
Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor [2006] 2 MLJ 685, FC (refd)

Gunung Bayu Sdn Bhd v Syarikat Pembinaan Perlis Sdn Bhd [1987] 2 MLJ 332, SC (folld)
Lee Sin Hwee & Ors (ketiga-tiganya adalah rakan kongsi yang berniaga dibawah nama dan gaya Tong Mee Timber Trading Co) v Ipmuda Selatan Sdn Bhd [2021] MLJU 28, HC (refd)
Mayban Finance Berhad v Yau Jiok Hua and Anor [2007] MLJU 100; [2007] 7 CLJ 609, HC (refd)
Multi-Purpose Bank Berhad v Unipheonix Corporation Berhad [2006] 5 AMR 545 (refd)
Ngai Heng Book Binder Pte Ltd v Syntax Computer Pte Ltd [1988] 2 MLJ 205 (folld)
Roman Ceramic Trading Sdn Bhd & Ors v NCK Ceramic Marketing Sdn Bhd [2020] MLJU 1552, HC (refd)
Sogelease Advance (M) Sdn Bhd v Sri Datai Engineering Sdn Bhd & Ors [2002] 6 MLJ 59, HC (folld)
South East Asia Insurance Bhd v Kerajaan Malaysia [1996] MLJU 642; [1998] 1 CLJ 1045, CA (folld)
YTL Cement Marketing Sdn Bhd v Easy Mix Sdn Bhd & Anor [2020] MLJU 1238, HC (refd)

Legislation referred to

Rules of Court 2012 O 14, O 14 rr 1, 1(1), 2

Nimisha Jaya Gobi (Kok Hao Ying with her) (LAW Partnership) for the plaintiff. Justin TY Voon (Pang Kwong Hang with him) (Justin Voon Chooi & Wing) for the defendants.

Adlin Abdul Majid JC:

INTRODUCTION

[1] Buildcon Concrete Sdn Bhd ('plaintiff'), filed an application for summary judgment against Mammoth Empire Construction Sdn Bhd ('the first defendant'), Ng Yee Teck ('the second defendant') and Cheah Joi Yong ('the third defendant') (collectively, 'the defendants').

[2] The judgment sought by the plaintiff against the defendants is for the outstanding principal sum of RM8,340,419.44, and interest on the outstanding sum amounting to RM10,600,006.51 ('claimed sum').

[3] I dismissed the summary judgment application. The reasons for the dismissal are set out below.

BACKGROUND FACTS

[4] The plaintiff's claim arises from the relationship of supplier and purchaser, between the plaintiff and the first defendant.

[5] Pursuant to letters of quotation ('agreements') issued by the plaintiff to the first defendant between the years 2014–2017, the plaintiff supplied and delivered ready-mix concrete products ('goods') to the first defendant. The agreements contain terms on pricing for the goods, delivery of the goods, the periods for settlement of invoices, and the imposition of a late payment interest of 1.5% per month on outstanding sums, from the due date of payment until full settlement of such outstanding sums.

[6] The first defendant also applied to open a trading account with the plaintiff. The 'Application to Open Trading Account' makes reference to the late payment interest of 1.5% per month, to be imposed on outstanding sums due.

[7] Further, a guarantee dated 28 November 2005 ('guarantee') was executed by the second and third defendants in favour of the plaintiff. Under the guarantee, the second and third defendants agreed to jointly and severally guarantee, not just as sureties but as principal debtors, on demand, the indebtedness of the first defendant to the plaintiff, up to the amount of RM15m.

[8] The goods were supplied and delivered by the plaintiff to the first defendant.

[9] There are outstanding sums due and owing by the first defendant to the plaintiff, arising from the supply and delivery of the goods. The plaintiff claims that as at 31 August 2018, the first defendant was indebted to the plaintiff in the sum of RM20,569,300.22 ('August 2018 debt').

[10] A meeting was thus held between the representatives of the plaintiff and the first defendant in August 2018 ('August 2018 meeting'), to discuss the August 2018 debt. After the August 2018 meeting, the following correspondences were exchanged between the parties:

(a) the plaintiff issued a letter dated 12 September 2018 ('the plaintiff's letter') to the first defendant recording the August 2018 debt and enclosing a debit note which contained details of the outstanding sum. The plaintiff's letter also states that the August 2018 debt would be reduced by way of the plaintiff's offtake of sand from Hasil Perangsang Holdings Sdn Bhd ('Hasil Perangsang');

(b) the first defendant responded to the plaintiff's letter by way of a letter dated 14 September 2018 ('the first defendant's letter'). The first defendant requested for a reduction in the outstanding interest.

[11] The plaintiff continued to supply and deliver the goods to the first defendant until May 2019. In the meantime, the plaintiff obtained sand from Hasil Perangsang, to offset the first defendant's August 2018 debt. The offtake of the sand by the plaintiff continued until January 2020.

[12] As at 8 July 2020, upon the deduction of the offtake of sand by the plaintiff and payments made by the first defendant, the first defendant was still indebted to the amount of the claimed sum. Letters of demand were issued by solicitors of the plaintiff to the defendants, to demand payment for the claimed sum. The defendants did not respond to the letters of demand.

[13] As such, the plaintiff commenced this action against the defendants.

PRINCIPLES OF SUMMARY JUDGMENT

[14] The plaintiff's application is made pursuant to O 14 r 1(1) of the Rules of Court 2012 ('the ROC 2012'). Order 14 r 1(1) provides that:

> Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part thereof except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

[15] It is undisputed that the writ and statement of claim have been served on the defendants, and that the defendants have entered appearance in this action.

[16] Learned counsel for the plaintiff, Ms Nimisha Jaya Gobi, began her submission by referring to *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 and *Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor* [2006] 2 MLJ 685. From the cases referred to, the following principles of summary judgment can be derived:

(a) summary judgment is a procedural device available for prompt and expeditious disposal of an action without a trial;

(b) to succeed in an application for summary judgment, all substantive issues must be clear, and must be able to be determined once and for all;

(c) once the plaintiff has complied with the preliminary requirements under

O 14 rr 1 and 2, namely that: (i) the defendant has entered appearance; (ii) the statement of claim has been served on the defendant; and (iii) the affidavit in support of the summary judgment application has complied with the requirements in O 14 r 2, the plaintiff has established a prima facie case against the defendant. The burden then shifts to the defendant to satisfy the court as to why judgment should not be given against him; and

(d) where a defendant's assertion, denial or dispute is equivocal or lacking in precision or is inconsistent with undisputed contemporary documents, then such assertion, denial or dispute will be rejected. In such a case, the court may grant judgment summarily against the defendant.

THE PLAINTIFF'S CASE

[17] Counsel for the plaintiff submits that the defendants have failed to raise any triable issue or defence on the merits which can be substantiated by credible evidence. As such, summary judgment should be granted against the defendants.

[18] The plaintiff asserts the following:

(a) the claim is clear and straightforward:

The plaintiff argues that it has established a clear and straightforward case against the defendants. The plaintiff relies on the following documents, which were adduced in affidavits:

(i) the agreements;

(ii) the 'Application to Open Trading Account';

(iii) the guarantee;

(iv) the plaintiff's letter;

(v) the first defendant's letter;

(vi) delivery orders and invoices for the goods; and

(vii) credit notes for the offtake of sand by the plaintiff; and

(viii) evidence of payments made by the first defendant.

(b) there are no triable issues or defence on the merits:

(i) further, the plaintiff argues that the defendants have failed to raise any triable issue or defence on the merits; and

(ii) the plaintiff argues that:

(A) the defendants have failed to credibly dispute the claimed sum;

(B) the defendants have not demonstrated that they have fully paid the claimed sum; and

(C) the defendants have not shown that there is still a continued supply of sand to the plaintiff by Hasil Perangsang, nor have the defendants credibly challenged the set off of the sums due by the first defendant from the offtake of sand by the plaintiff.

(c) the defendants' conduct tantamounts to an admission of their indebtedness towards the plaintiff:

(i) the plaintiff argues that:

(A) in the first defendant's letter, the first defendant did not dispute the August 2018 debt. Further, the first defendant had requested the plaintiff for a discount of the interest charged but did not deny that interest can be charged;

(B) by the first defendant's conduct, the only position that can be inferred is that the first defendant does not deny its indebtedness to the plaintiff; acknowledges that the quantum and calculation of the August 2018 debt are true and accurate; agrees that the plaintiff is entitled to charge 1.5% interest on the outstanding principal sum; and agrees with the position in the plaintiff's letter; and

(C) the defendants are estopped by their conduct from challenging the details of the August 2018 meeting and/or from disputing its indebtedness to the plaintiff; and

(ii) further, the plaintiff stressed that the defendants have failed to respond to letters of demand issued by the plaintiff, and the failure to respond amounts to an implied admission of liability on the part of the defendants.

THE DEFENDANTS' CASE

[19] The court must now examine whether the defendants have raised any triable issue, which would require this matter to be heard at trial, instead of being determined summarily under O 14 of the ROC.

[20] In his oral submission, learned counsel for the defendants, Mr Justin Voon focused on two main issues, namely:

(a) that the claimed sum has not been be clearly and definitively ascertained and substantiated by the plaintiff; and

(b) that there was a compromise arrangement between the plaintiff and the first defendant, which was discussed during the August 2018 meeting.

[21] On the first issue, Mr Voon explained that there has been a series of dealings between the plaintiff and the first defendant over the years, culminating in delivery orders and invoices issued by the plaintiff, the offtake of sand by the plaintiff, and payments made by the first defendant.

[22] Mr Voon also highlighted that details in the statement of claim are not consistent with details in the debit note attached to the plaintiff's letter. This raises questions as to the accuracy of the claimed sum. I have considered these details, and my findings are as follows:

(a) the debit note in the plaintiff's letter reflects the following:

(i) the amount outstanding for the period between May 2015–December 2016 is the principal sum of RM14,334,409.75 and interest of RM3,234,966.15 (as at 5 January 2017); and

(ii) the amount outstanding for the period between 6 January 2017–9 August 2018 is the principal sum of RM14,121,201.37 and interest of RM6,448,098.85 (as at 9 August 2018). These sums total up to the August 2018 debt;

(b) 'Dokumen A' which is attached to the statement of claim, reflects the principal sum outstanding as at 8 July 2020, for the period between 28 June 2017–3 May 2019, which totals up to RM8,340,419.44. This is the principal sum of the claimed sum. The outstanding interest is not set out in 'Dokumen A'; and

(c) presumably, the reduction in andthe principal sum from RM14,121,201.37 as at 9 August 2018 to RM8,340,419.44 as at 8 July 2020 would have been due to the offtake of sand by the plaintiff (as agreed during the August 2018 meeting) and payments made by the first defendant. However, from copies of invoices, credit notes and debit notes adduced by the plaintiff, the calculations leading to this reduction have not been clearly shown.

[23] The plaintiff also explained that the claimed sum is derived from:

(a) the set off from the offtake of sand by the plaintiff, leading to a reduction of the balance principal sum due, to RM7,631,274.44; and

(b) the continued supply of the goods by the plaintiff to the first defendant after the August 2018 meeting, amounting to the sum of RM709,145.

[24] However, the plaintiff has not sufficiently shown how the above sums were calculated.

[25] Taking into account the above, I am guided by *Sogelease Advance (M) Sdn Bhd v Sri Datai Engineering Sdn Bhd & Ors* [2002] 6 MLJ 59, which was referred to by the defendant. In this case, the High Court found that:

> Since the plaintiff's claim is for special damages, it therefore follows that it is incumbent upon the plaintiff to prove with clarity the various claims contained in the statement of claim, and in an application to enter summary judgment, such particulars on its various claims ought to be sufficiently set out with clarity in its supporting affidavit(s).

[26] The Singapore High Court decision of *Ngai Heng Book Binder Pte Ltd v Syntax Computer Pte Ltd* [1988] 2 MLJ 205 was also referred to by the defendants. The court held as follows:

> While the fact-situations in the above cases are not identical to the present case, the basic issue that presented itself in those cases is similar to the present: *does Order 14 apply, where liability is not denied but the specific amount claimed is disputed?* It seems to me clear, in the light of those authorities, that leave ought to be granted to the defendants to defend the action. The claim is for the sum of $8,050. There is no alternative claim for unliquidated damages. As the affidavits and defence filed raised questions of fact and law, interlocutory judgment with damages to be assessed is not the proper order to make. *It seems to me that such an order should only be given in a case where unliquidated damages are claimed and the defendant fails to establish a right to defend. The present action concerns a specific sum and as that is seriously disputed by the defendants and summary judgment may not be entered for the sum claimed or part thereof, leave to defend should have been given.* (Emphasis added.)

[27] The above cases support the argument that particulars of a claim must be clearly spelt out, before judgment can be granted summarily. In this case, it is not clear how the claimed sum is calculated. It is also unclear how the August 2018 debt was reduced to the claimed sum, thus raising serious issues on the accuracy of the claimed sum.

[28] Closely related to this first the issue of the lack of clarity of the claimed sum, is the second issue raised by counsel for the defendants, namely the compromise arrangement between the plaintiff and the first defendant, which was discussed during the August 2018 meeting. The defendant argues that issues discussed at the August 2018 meeting can only be resolved by oral evidence.

[29] It is noted that the plaintiff's letter records the August 2018 debt and states that the August 2018 debt would be reduced by way of the plaintiff's offtake of sand from Hasil Perangsang. However the letter does not address the exact details of the sand arrangement, such as when the sand arrangement commences and when the arrangement should stop. I agree with the

defendants' argument that these issues can only be resolved by way of oral evidence.

[30] In relation to the second and third defendants, counsel for the defendants, relying on *Mayban Finance Berhad v Yau Jiok Hua and Anor* [2007] MLJU 100; [2007] 7 CLJ 609 and *Multi-Purpose Bank Berhad v Unipheonix Corporation Berhad* [2006] 5 AMR 545 contends that their liability is merely secondary to the first defendant's liability. The second and third defendants would therefore be entitled to rely on all points raised by the first defendant in its argument that summary judgment should not be granted against the defendants.

FINDINGS

[31] Based on this issues raised by the parties, I find that the plaintiff's claim is not a straightforward claim, which would permit the grant of summary judgment.

[32] Learned counsel for the plaintiff, in arguing that the claim is a straightforward case of of debt recovery, referred to cases which she says is similar to this action. She explained that in these cases, namely *Lee Sin Hwee & Ors (ketiga-tiganya adalah rakan kongsi yang berniaga di bawah nama dan gaya Tong Mee Timber Trading Co) v Ipmuda Selatan Sdn Bhd* [2021] MLJU 28; *Roman Ceramic Trading Sdn Bhd & Ors v NCK Ceramic Marketing Sdn Bhd* [2020] MLJU 1552; and *YTL Cement Marketing Sdn Bhd v Easy Mix Sdn Bhd & Anor* [2020] MLJU 1238, judgments were granted summarily by the courts.

[33] However, the cases referred to are straightforward cases of debt recovery where the arguments of the defendants against the grant of summary judgment were premised on for example, allegations of non-delivery of goods or delivery of defective goods, which could not be substantiated. The claim before this court can be distinguished simply with the existence of the compromise set off arrangement which was discussed at the August 2018 meeting.

[34] I find that the defendants have sufficiently raised the following triable issues:

(a) the lack of clarity of the claimed sum; and

(b) the compromise arrangement between the plaintiff and the first defendant, which was discussed at the August 2018 meeting.

[35] The defendants referred to *Gunung Bayu Sdn Bhd v Syarikat Pembinaan Perlis Sdn Bhd* [1987] 2 MLJ 332, where the Supreme Court found as follows:

A What is clear to us is that there appears to be a plentitude of triable issues. It is trite law that leave to defend must be given unless it is clear that there is no real substantial question to be tried (*Codd v Delap* (1905) 92 LT 510) or unless there is no dispute as to facts or law which raises a reasonable doubt that plaintiff is entitled to judgment.

B

[36] With triable issues raised, counsel for the defendants urged to court to grant the defendants the opportunity to adduce oral evidence and defend themselves at a full trial.

C **[37]** The defendants also referred to *South East Asia Insurance Bhd v Kerajaan Malaysia* [1996] MLJU 642; [1998] 1 CLJ 1045, where the Court of Appeal held that:

D *It is well settled that if a defendant in an O 14 application succeeds in raising even a single triable issue, it will not be a fit and proper case to order summary judgment.* It is only in plain and obvious cases where there are no issues to be tried should recourse be had to O 14. In *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400; [1992] 1 CLJ 627 (refd), it was held by the Supreme Court that in an application under O 14 the court has to be satisfied on affidavit evidence that the defence has not only raised an issue, but also that the issue is triable. (Emphasis added.)

E

[38] Guided by the cases referred to by the defendants as highlighted above, I find this is not a plain and obvious case with no issues to be tried, which would be suitable for judgment to be granted summarily.

F DECISION

[39] The plaintiff's summary judgment application in encl 30 is dismissed. Costs of RM5,000 are to be paid by the plaintiff to the defendants.

G *Application dismissed with costs.*

Reported by Muhamad Azham Marwan

H

I